

19 43-40

File

B CLASS

P.W. 6331/36 I

DEPART^{mt}

EL

BRANCH (1)

Subject:— War Risk (Factories) Insurance
Ordinance No XII of 19 42.

Compensation to Public electricity
supply undertakings under —
(War Costs Surcharge)

BCK 194

File No. 6331/36 I

Correspondence

DOCKET SHEET (B)

Subject :—

File No. 6331/36 I

P.W. DEPT.

E.L. BRANCH. (1

References :—

Date.	To whom sent.	Notes and instructions.

O R D E R.

In exercise of the powers conferred by rule 81 of the Defence of India Rules, the Government of is pleased to make the following Order:-

1. (1) This Order may be called the insert the ~~name~~ name of Province) Electricity Supply (Licensed Undertakings' War Costs) Order 1944.

2. (2) It shall come into force at once.

(3) It extends to the whole of the Province of.....

2. In this Order, unless there is anything repugnant in the subject or context, expressions shall have the meanings assigned to them in the Indian Electricity Act, 1910, or in the Excess Profits Tax Act, 1940.

3. (1) Every licensee shall, within 30 days from the commencement of this Order, submit a declaration to the Provincial Government stating whether in the licensee's opinion a War Costs Surcharge in terms of this Order is or is not desirable in the case of the Licensee's undertaking. In the event of a Licensee declaring that such a ~~surcharging~~ surcharge is in his opinion desirable as aforesaid he shall also -

(a) Declare the rate of the War Costs Surcharge which he deems desirable, calculated in accordance with this Order.

(b) append the relevant calculations ~~showing~~ showing how the rate of the War Costs Surcharge which he deems desirable has been arrived at;

(c) certify that the aforesaid calculations are correct to the best of his knowledge and belief;

(d) agree to execute the undertaking set out in the Second Schedule to this Order in accordance with such demand as the Provincial Government may, in pursuance of clause 6, think fit to make;

(e) state whether he considers that the Provincial Government should waive execution of the aforesaid undertaking or clause (a) thereof,

execution or

the aforesaid under-taking or clause (a) thereof,
and, if so, for what reasons.

(2) Every War Costs Surcharge shall be calculated on a licensee's overall charges for the supply of energy, before deducting rebate for prompt payment, and expressed as a percentage of such charges:

Provided firstly that every War Costs Surcharge shall be expressed in terms of a percentage of the licensee's overall charges for the supply of energy before deducting rebate for prompt payment and shall be for application equally to all such charges except as set out in the second proviso to clause 5.

Provided secondly that no War Cost Surcharge shall exceed a rate which will in estimate result in increasing the gross revenue of a licensee's undertaking approximately by the amount of the costs which may be taken into account in calculating the said rate under the First Schedule to this Order, plus any amount which may be taken into account in accordance with clause 8 less any amount which is to be taken into account in accordance with the undertaking contained in the Second Schedule to this Order.

Provided thirdly that all calculations for arriving at a rate of War Costs Surcharge shall take as a base the best available evidence of relevant expenditure and revenue from sales of energy.

4. (1) Within fifteen days from the receipt of a declaration under sub-clause (1) of clause 3, the Provincial Government shall, if a War Costs Surcharge is considered by the licensee to be desirable, by order fix the rate of War Costs Surcharge in respect of that licensee's undertaking at the declared rate or at 15 per centum whichever is less:

Provided that the Provincial Government may at any time after passing such an order cause an enquiry to be made into the propriety of a licensee's calculations by which such declared rate has been computed and may order

order revision of the fixed rate if in its opinion the said calculations are ~~improper~~.

Provided further that the Provincial Government may, from time to time after such enquiry (if any) as it may think fit to cause to be made, enhance the rate fixed under this clause.

(2) No persons other than the Provincial Government or the persons authorized by it to make an enquiry under the provisos to sub-clause (1) shall be entitled to enquire into the propriety of the calculations leading to the fixation of a War Costs Surcharge.

5. Upon the rate of a War Costs Surcharge being fixed by the Provincial Government from time to time in accordance with this Order it shall not be lawful for the licensee concerned to supply energy at other than charges surcharged at the rate for the time being so fixed:

Provided that no War Costs Surcharge or any ~~and~~ subsequent upward revision thereof shall be effective upon charges contained in any bill covering any energy supplied before the making of the relevant order by the Provincial Government.

Provided further that no War Costs Surcharge shall be effective upon the charges for the supply of energy under any contract entered into after 1st May 1942, unless such contract provides for the same charges for energy as have been contained in similar previous contracts for similar supply by the licensee concerned (as to which in the event of dispute by any party interested the decision of the Provincial Government shall be final) or unless and to such extent as such application may be expressly ordered by the Provincial Government.

Government.

6. Upon demand by the Provincial Government after a rate of War Costs Surcharge has been fixed under sub-clause (I) of clause 4 the licensee concerned shall execute an undertaking in the form set out in the Second Schedule to this Order and file it with the Provincial Government.

Provided that the Provincial Government may waive the execution of clause (a) of the said undertaking at either wholly or partly if in its opinion the effect would be unduly repressive.

7. Any existing surcharges applied by a licensee with the object of covering increased costs of whatever nature by authority of any previous law to his charges for the supply of energy shall be withdrawn upon the fixing of a rate of War Costs Surcharge applicable to his undertaking under this Order or after 45 days from the commencement of this Order, whichever is earlier.

8. In the event of any restrictions in the use of consumption of electrical energy imposed for securing the defence of any part of British India or for the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community having materially reduced the return on capital employed in any licensee's undertaking the licensee shall be permitted to take the future estimated effect of such reductions wholly or partially into account in calculating the rate of War Costs Surcharge under sub-clause(2) of clause 3.

9. (I) The Provincial Government may from time to time on application by a licensee fix by order revised charges and conditions in respect of the licensee's maintenance of street lighting equipment under any contract, having regard to all relevant circumstances which in the opinion of the Provincial Government should be taken into account for the purpose.

(2) For purposes of application of a War Costs Surcharge and for the purposes of this Order including clause 5 a licensee's charges for maintenance of street lighting equipment shall be deemed to be charges for the supply of energy.

10. The provisions of this Order shall apply notwithstanding anything contained in any other law or in any licence granted under the Indian Electricity Act, 1910, or in any contract or requisition for supply of energy or in any contract covering the maintenance of street lighting equipment.

THE FIRST SCHEDULE.

(To be read as forming part of the second proviso to sub-clause (2) of clause 3.)

The cost which may be taken into account in calculating the rate of War Cost Surcharges.

The amounts of the cost detailed in Column I which may be removed.

(a) Costs which it is estimated will be incurred after the date on which War Costs Surcharges (or any subsequent revision thereof) are imposed and in respect of:-

- (1) War Risks Insurance.
- (2) War Injuries Insurance.
- (3) Dearness Allowances to Staff
- (4) Increased cost of maintenance materials properly debitable to current revenue.

(This shall be calculated for any period by multiplying the estimated number of units generated in that period by the difference between (a) the estimated maintenance materials cost per unit generated in the corresponding period of the Licensee's Accounting Year ending in 1939.

(a) All or part, in the discretion of the Licensee, after deducting any amount estimated to be recoverable by the continued operation of increases in or surcharges on the charges for supply of energy as at 31st December 1939, or by the terms of any existing contract for the supply of energy.

(5) Increased cost of Fuel.

(This shall be calculated for any period by multiplying the estimated number of tons consumed in that period by the difference between (a) the estimated cost per ton consumed in ~~that period~~ the same period and (b) the actual cost per ton consumed in the corresponding period of the Licensee's Accounting Year ending in 1939.)

(6) Increased cost of energy purchased from build suppliers.

(This shall be deemed to be for any period the difference between (a) the cost, calculated at the build supplier's tariff applicable, of the estimated amount of energy purchased at the estimated demand and power factor during that period and (b) the amount which the same quantity of energy at the same demand and power factor would have cost calculated, at the build suppliers' tariff applicable in the corresponding period of the Licensee's Accounting Year ending in 1939.

(b) Costs which were incurred prior to the date on which War Costs Surcharges are first imposed and in respect of:

- (1) War Risks Insurance.
- (2) Dearness Allowances to Staff.
- (3) Increased cost of maintenance materials properly debitable to current revenue.

(This shall be calculated for any period by multiplying the actual number of units generated in that period by the difference between (a) the actual maintenance materials cost per unit genera

generated in the same period
and (b) the actual maintenance
materials cost per unit gener-
ated in the corresponding
period of the Licensee's
Accounting Year ending in
1939.

(b) So much of the ba-
lance after deduct-
ing any amount esti-
mated to have al-
ready been recov-
ered by the oper-
ation of increases
in or surcharges

(4) Increased cost
of fuel.

on the charges for
supply of energy
as at 31st Decem-
ber 1939, or by
terms of any con-
tract for the su-
pply of energy, as
the Provincial
Government may
authorise.

(This shall be calculated
for any period by multiplying
the actual number of tons con-
sumed in that period by the
difference between (a) the
actual cost per ton consumed
in the same period and (b)
the actual cost per ton con-
sumed in the corresponding
period of the Licensee's
Accounting Year ending in
1939.

(5) Increased cost of
energy purchased from ~~bulk~~ suppliers.

(This shall be deemed to be for any
period the difference between (a) the
cost, calculated at the ~~bulk~~ supplier's
tariff applicable of the actual amount
of energy purchased at the actual demand
and power factor during that period and

(b) the amount which the same quantity
of energy at the same demand and power
factor would have cost calculated at the
~~bulk~~ bulk supplier's tariff applicable

applicable in the corresponding period
of the Licensee's Accounting Year ending in 1939).

THE SECOND SCHEDULE.

(See clauses 3 (I) (d) and 6.)

The Electric
Supply Co. Ltd., the Licensee under the
..... Electric Licence hereby declares -

(a) that if at any time the
Company's Undertaking is assessed to Excess Profits
Tax in any chargeable accounting period ending subse-
quent to the date a War Cost Surcharge, is first fixed
under the Electricity
Supply (Licensed Undertakings' War Costs) Order, 1944,
then the amount of the Excess Profit, after deduction
of taxation due thereon, will be recorded and the Co-
mpany will specially reduce the charges for supply of
energy so as to result in an estimated reduction of gross
revenue by an approximately equivalent amount during the
next succeeding two Accounting Periods following upon
the completion of the relative assessment.

Alternatively, if the Provincial Government and the
Company agree that such a special reduction of the charges
for supply of energy would, on account of other factors,
result only in a temporary variation, or that the reduction
would be negligible, the recorded amount will be placed by
the Company to a Reserve to be called the "Rates Stabilisati-
on Reserve" and this reserve will be taken fully and a
fairly into account in determining the magnitude of any

of any

of any subsequent revision of War Cost Surcharges or charges for supply of energy whether upwards or downwards.

(b) That if at any time during the enforcement of the taxation provisions of the Excess Profits Tax Act, 1940, the Company's Undertaking any Accounting Period ending subsequent to the date a War Cost Surcharge is first fixed under the aforesaid Order, earns profits exceeding 7 per. cent. of the average amount of Capital employed in the business during that period, then the amount of the excess, after deducting any smaller amount recorded or set aside to Reserve in terms of clause (a) of this undertaking and the taxation due on such excess, will be taken into account to reduce the charges for supply of energy or be set to the "Rates Stabilisation Reserve" in the same manner and on the same terms as are set out in the said clause (a).

A P P E N D I X.

In this Appendix are given some notes on the proposed order and suggestions for operating it.

Clause 3 (1) .- A War Costs Surcharge is beyond doubt legal and applicable to all existing contracts if it leaves to electric supply undertakings no option but to call the surcharge into being . This clause therefore makes it compulsory upon every licensee, as a preliminary to submit a declaration stating whether in his opinion a War Costs Surcharge in terms of the Order is or is not desirable in the case of his of his undertaking.

undertaking.

Sub-clauses (a) to (e) of this clause are consequential and include an agreement to execute the undertaking containing the deterrent provisions ~~and~~ if the licensee considers a War Costs Surcharge desirable.

Clause 3 (2) .- This clause describes the War Costs Surcharge. The intention is that surcharges shall be on the " All-in-rate" for the supply of energy. That is to say, inclusive of any demand charge and the unit charge for energy supplied but excluding the rebate allowed for prompt payment of dues, meter rents, and any electricity duty, as these are not licensee's charges for the supply of energy". Minimum charges where applicable are of course "charges for the supply of energy."

First Proviso.- The object is to spread the burden of the War Costs as equally as possible over all consumers.

Second Proviso.- It is not suggested that concerns should generally be permitted to make use of the special provisions of this Order to make good War Costs already incurred, as most of them have been able and willing to draw on reserves for this purpose but in cases where Provincial Governments feel that hardship would otherwise result they might permit the calculations for surcharges to include some previous war costs in their discretion. In the latter cases relaxation under the proviso to clause 6 of undertaking (a) of the second Schedule might also be indicated. Special provisions for assistance with A.R.P. expenditure have already been dealt with in correspondence resting with the late Civil Defence Department letter ~~Sub A File 5224/8 I~~ 47/49 No. 47/42(2)-A.R.P.I., dated 20th November 1942 and as these cost may be fully recovered separately they have consequently been eliminated

eliminated from consideration in the present scheme. Besides the special costs listed in the First Schedule, there are other amounts which it is proposed may be taken into account in the calculations for surcharges, namely those in the "Rates Stabilization Reserve" (vide undertakings (a) and (b) of the Second Schedule) and estimated short falls under clause 8.

Third Proviso.- It is unlikely that appropriate surcharges can be based on previous annual audited accounts as, in view of changing conditions, these accounts will not normally give a guide to the current or estimated future expenditure and revenue with which this problem is concerned.

Clause 4 (I) and provisos.- It is suggested that Provincial Governments need not generally concern themselves with the calculations leading to the levy of surcharges under the Order, provided the latter seem reasonable, in view of the deterrent provisions of clause 6. Provincial Governments may therefore find it possible to issue a specific order within fifteen days from the receipt of each declaration, fixing the rate of War Costs Surcharge for the undertaking concerned but not exceeding 15 per cent. If a licensee declares his desire for a surcharge in excess of 15 per cent. the Provincial Government can in the first instance fix the surcharge at 15 per cent. and subsequently on consideration issue another order under the provisos fixing the rate at a higher figure. Similarly if a

if a licensee claims that any ~~costs~~ under sub-head (b) of the First Schedule should be taken into ~~own~~ account, the Provincial Government may fix the rate of surcharge in the first instance without regard to these, and, after consideration of the case, may revise the rate of surcharge by a subsequent order.

In view of the remarks made in respect of the Third Proviso to clause 3(2) it is suggested that if despite the undertaking under clause 6 an investigation is felt necessary under the provisos to this clause it may be made with the assistance of Government auditors to examine the evidence on which the ~~cal-~~culations were based.

Clause 4 (2) .- The public are excluded from any ~~licensees for whose undertaking a rate of surcharge has been fixed under~~ enquiry into these matters, especially in view of Rule 45B i No.79-80 of the Defence of India Rules.

Clause 5.- This makes it unlawful for any licensee for whose undertaking a rate of surcharge has been fixed under clause 4(1) to supply energy at other than rates surcharged in accordance with the Order. The effect of this provision is that where contracts for a supply of energy are involved, the consumer must either continue to take energy at the surcharged rate or not at all. In the latter alternative he can claim the frustration of the contract for supply and can cease consumption during the period of compulsory surcharge without penalty. There

there

There is nothing to prevent him negotiating a fresh contract with the supplier but this must be a matter for mutual agreement.

First Proviso.- It is considered equitable that consumers should be given reasonable notice of the impending surcharges.

Second Proviso.- The Government of India and other consumers have entered into contracts for the supply of energy after 1st May 1942 (the date on which the War Risks (Factories) Insurance Scheme first became operative) which contracts have been based on higher costs of operation. Surcharges should therefore not be permissible on the rates for energy under such contracts unless it can be shown that the rates provided in the contract are now inadequate, in which case a surcharge of appropriate magnitude may be specially fixed by Order. On the other hand some concerns have merely renewed contracts in their stands terms after 1st May 1942, without any change of rates, and surcharges upon the rates under such contracts should be applicable without special formalities.

Clause 6.- This covers the deterrent provisions referred to previously. In undertaking (b) of the Second Schedule the figure of 7 percent. (less tax) on capital employed has been taken as representing a reasonable return for purposes of present legitimation.

Proviso to clause 6.- A factor which might make it desirable for provincial Government to waive undertaking (a) of the Second Schedule under this sub-clause, apart from conditions mentioned in the comments on the Second Proviso to clause 31st would be that a concern has an unfortunately low "Standard Profit" from before the war so that it would appear that somehow higher earnings are now

now reasonable.

Clause 7.- The intention of this clause is to maintain a uniform policy in the application of surcharges.

Clause 8.- This supplements the consideration set out in the Government of India's (the late Civil Defence Department ~~Ex Sub B File 5961/31/~~ ~~13525~~ ~~P.I~~ Circular letter No.62/42 A.R.P.I(6) dated 6th May 1942, to all Provincial Government on the subject of compensation for loss of revenue of electric supply undertakings during black-outs. Loss of revenue on account of brown-outs and fuel rationing should now also be taken into consideration, all being subject to the deterrent provisions of clause 6.

Clause 9(I) .- Although, in view of sub-clause (2) of this clause, the rate of surcharge should normally be sufficient to cover the licensee against increased costs of maintaining street lighting equipment which he may have contracted to do, this will not always be so. Some suppliers have contracted to maintain street lighting equipment at charges for maintenance specified as a rate ~~per~~ per unit sold, and in such cases, and where sales of ~~en-~~ energy have been compulsorily reduced, the remuneration for maintenance has consequently decreased, whereas in actual fact maintenance ~~of street lighting equipment by~~ costs have generally increased. The Order takes power to the Provincial Governments to fix revised charges for maintenance of street lighting equipment by order having regard to such factors. This clause also takes power to ~~fix revised charges for maintenance of street~~ fix revised ~~charges for maintenance of street~~ conditions for maintenance of street lighting equipment. In particular, this power may be necessary owing to scarcity of electric light bulbs, as it may no longer be possible for an undertaking to provide the quantity which it has undertaken to provide. (This fact also may affect the

affect the proper charges for maintenance).

Clause 9(2) .- This sub-clause is designed to ~~en~~ enable normal increased costs of street lighting maintenance to be automatically recovered, and also will avoid any difficulties which might arise should charges for energy and for maintenance not be segregated in an undertaking's street lighting contracts.

General.- Provincial Governments are the final authorities for making revisions under sub-clause (I) of clauses 4 and 9. It is hoped that should a Provincial Government be in any doubt regarding the revision it should make in any particular case, or on any other matter, it will consult the Central Govt. in this Department. It is desirable that so far as possible there should be a uniform policy in all matters relating to the order and it is felt that this can best be achieved if Provincial Governments consulted the Government of India on any point on which the feel doubtful.

~~G.P.D. M240 D of L 63/44-175.~~

Submitted.

2. In the circumstances explained in their letter PP I7-I8 the G. of I propose that the Provl. Govt. should consider the issue of an order on the lines of one PP I3-I4 attached by them, authorising the levy of War Costs Surcharge by Electric Public Utilities. They consider^{P.I8}/that the issue of such an order is necessary and observe P.I8 that ~~xx~~ if such orders are to be issued by Provinces it is eminently advisable that the maximum possible uniformity should be obtained. In their general remarks in the Appendix, PP. I5-I6 which contains their comments on the proposed order, the G. of I have further observed P I6 that " It is desirable that so far as possible there should be a uniform policy in all matters relating to the order and it is felt that this can best be achieved if the Provl. Govts. consult the G. of I. on any point on which they feel doubtful."

3. The order proposed by the G. of I . may be read with their comments in the Appx. PP I5-I6. The main features of the order are:-

(i) It is left to the licensee's opinion whether to levy a War Costs Surcharge in the terms of the Order or not . In this connection he has to declare his opinion and if he desires to levy the surcharge, the rate, which he deems desirable, calculated in accordance with the provisions of the Order,, within 30 days from the commencement of the Order. (Vide clause 3) P I3.

(ii) If a War Costs Surcharge is considered by the licensee to be desirable, Govt. to issue an Order, within

(iii) After passing an order as above Govt. may at any time thereafter cause an enquiry to be made into the propriety of the licensee's calculations of his declared rate and may order the revision of the fixed rate, if the said calculations are improper. (Vide clause 4).

(iv) Any existing Surcharge applied by the licensee with the object of covering increased cost of whatever nature to be withdrawn upon fixing the rate of War Cost Surcharge under the order or after 45 days from the commencement of the Order in question, whichever is earlier. (Vide clause 7 P I3.)

(v) If any licensee considers necessary to revise charges and conditions in respect of maintenance of street lighting equipment under a contract he has to make an application for such revision to Govt. who, on such appln. by the licensee, will fix by order revised charges and conditions having regard to all relevant circumstances (Vide clause 9 P I3).

4. This Govt. has so far issued order reg. levy of surcharge by licensees using diesel oil and steam for the generation of electricity with a view to recompensing them for the general increase in the cost of production due to condition arising out of war. No such order have been issued in respect of licensees using hydroelectric power as there has been so far no specific demand for any surcharge from any of the licensees concerned.

5. The Order issued in G.O. P.35 of file No.604I/36 (sunked case No.II) No.604I/36, dated the II-3-43, as modified on I.4.43, permits the licensees using diesel oil to levy surcharge not exceeding 33 1/3 p.c. in respect of general consumers as well as consumers on special contracts, as provided therein. This order came into effect from the 1st April 1943. Vide in this connection

connection..

connection further Cir. letter No. 6041/36-E1, dated the 29-9-1943. The question of cancelling this letter and amending the present order with a view to make effective the rates recommended by the Committee for maintenance, etc., for street lighting^a in cases where the electrical energy is supplied for street lighting to a local authority and where both such authority and the licensee are unable to fulfil the terms as reg: the minimum guarantee provided for in the contract owing to restrictions imposed on the supply of electrical energy under the Defence of India rules, is at present under consideration of Govt. The relevant draft order in that connection was refd. to the R.L.A. for his opinion but in view of the G. of I letter under disposal the file has been called for back and submitted as a linked case.

6. The order issued in G.O. No. 3053/36 dated the 8-12-1943 permits the licensees using steam for the generation of electrical energy to levy surcharge not exceeding 10 p.c. on the rates for the supply of energy to consumers on special contracts only, with the previous appl. of Govt., in accordance with the provision made therein.

In accordance with this order Messrs. The A'bad Ely. Coy., Ltd., and the Godhra Ely. Coy., Ltd., have been permitted to levy 10 p.c. surcharge upto the 31st March 1945.

7. The general Order proposed by the G. of I. seems suitable and it is for consideration whether it may be adopted subject to the remarks in the following paras.

8. There are as many as 69 licensees including sanction holders. The time limit of 15 days proposed in ~~xx~~ clause 4(I) of the order for the issue of an order by Govt. seems to be short and it is for consideration whether it may be raised, say to one month, and consequential amendment made in clause 7 of the order.

In this con: the G. of I. have observed that the Provl. Govt. need not generally concern themselves with the calculations made by the licensee leading to the rate of surcharge proposed by him, provided the latter seems reasonable, in view of the deterrent provisions of clause 6 and it may therefore find it possible for the Provl. Govt. to issue a specific order within 15 days from the date of receipt of the licensee's declaration. It is, however, feared that the smaller companies may not be able to calculate their rates properly in accordance with the provisions in the Schedule and Govt. may have to enter into correspondence with them before fixing the rate even initially.

If any change is to be made in the time limit it does not seem necessary that the G. of I. should be consulted before hand in the matter.

9. In accordance with the provision of clause 7 of the order all existing surcharges supplied by the licensees under the two Govt. orders mentioned in paras. 5 and 6 above will have to be withdrawn by the licensees within 45 days (or such limit as may be fixed - vide para. 8 above) from the commencement of the order. A cir. letter may, therefore, be issued to all licensees; simultaneously with the publication of the order, drawing attention to that order and specifically to clause 7 therefore and pointing out that the existing surcharges will have to be withdrawn within the limit specified; they should not therefore *continue*

~~within the limit specified, they should not~~ therefore fail to submit the reqd. declaration and the rate they propose to levy within the prescribed time limit.

10. The El. Engr. to Govt., the F.D. and the R.L.A. will have to be consulted before issue of the orders. However in view of A(R)'s note on P.19 ante these papers may perhaps be subtd. to him at this stage for information.

11. With refce. to the Addl. Secy's. note, dated the 22.3.44, it is respectfully observed that the G. of I. letter in question was marked to the D.S. (I&R) only as all the matters connected with the Control of Electricity supply, etc. have been allotted to him - Vide item 15 of list of cases to be submitted etc. under El.Br. The Addl. Secy's instructions are *noted for*

future guidance
9/5/44

9/5/44

The G. of I. desire that in the matter of levy of surcharge on rates charged for the supply of electrical energy, necessitated by "war costs", *the maximum possible uniformity should be obtained* in the orders issued by Provincial Governments. The G. of I. propose that Provincial Governments should consider urgently the issue of an order on the lines of the Draft order prepared by the G. of I.

2. This Govt. has already issued the following two orders under the Defence of India Rules -

- (i) No.604I/36 dated 11-3-43, relating to supply generated by diesel oil, permitting a levy of surcharge not exceeding 33 1/3 % of amounts charged for supply of electrical energy under a special contract and in other cases on

on amounts of monthly bills calculated in accordance with rates leviable under the license or the sanction, on I-I-43.

(ii) No.3053/36 dated 8-12-43, relating to supply generated by steam, permitting a levy of surcharge not exceeding 10% of the amount chargeable by the licensee in accordance with the lowest rate prevalent during the period commencing from I-9-39 and ending on I-4-43 for the supply of electrical energy to consumers under special contract.

3. No order has so far been issued for levy of surcharge in respect of supply generated by hydro-electricity. No representations have either been received from Hydro-Electricity concerns seeking permission to levy surcharge.

4. The Draft order proposed by the G. of I. is comprehensive and elaborate and differs in the following important respects from the orders issued by this Govt.

(i) It covers all licensees and applies to supply generated by any means.

(ii) It makes obligatory on the licensees to declare whether a war costs surcharge is desirable, and if so, to declare it, supported by calculations.

Bombay Govt. orders do not insist on this.

(iii) Provincial Govt. is to fix the rate of surcharge in the first instance at the declared rate or at 15% whichever is less.

In accordance with the orders issued by this Govt. it is left to the option of the licensees to fix the surcharge at any rate not exceeding 33 $\frac{1}{3}$ % in case of generation by diesel oil.

(iv) In order to provide no incentive to take unfair advantage by levy of unreasonable surcharges, deterrent provision has been made in draft order proposed by the G. of India - This is as follows -

The Licensees have to agree to execute an undertaking set out in the second schedule to the order. The effect of this undertaking is that if after the levy of surcharge the Co's undertaking is assessed to excess Profits Tax, the Coy. is required to reduce the charges. Also if the Coy. earns profits exceeding 7 per cent on the capital, such excess is also to be taken into ~~xxx~~ account for reducing the charges.

The orders issued by this Govt. contain no provision for controlling the profits of the undertakings.

(v) The Draft order contains a special clause empowering the Provincial Governments to fix, on application by a licensee; revised charges and conditions in respect of the licensee's maintenance of street lighting. The orders of this Govt. do not make any such provision and when subsequent to issue of these orders it was felt desirable

desirable to lay down certain conditions for regulating the charges for maintenance of street lighting, a circular letter was addressed by this Govt. (No.6 O4I/36-E1, dated 29-9-43) to all licensees generating energy by diesel oil advising them to decide the charges in such cases on the basis of certain recommendations made by ~~the basis of certain recommendations made by~~ the Committee appointed to advise Govt. It was however subsequently realised the the circular had no 'sanctions' behind it and accordingly it has been proposed to cancel this circular and issue instead an order under the Defence of India Rules. This proposal has generally been approved by the A(R) and the draft order is to be sent to the R.L.A. for scrutiny

(vi) In accordance with clause 5 of the G. of I. a draft order it would be unlawful for any licensee to supply energy at other than surcharged rates. The effect of this provision where contracts for supply of energy are involved, is that the consumer must either continue to take energy at the surcharged rate or not at all. In the latter alternative he can claim the frustration of contract and can cease consumption. A new contract could of course be negotiated with mutual agreement.

Under the orders of this Govt. relating to supply generated by diesel oil there is no compulsion in cases of contracts to levy the surcharge. This was made clear in the Govt. circular refd. to in sub-para (v) above. In this circular the licensees were advised to settle all cases of surcharges on special contracts, mutually with the contracting parties, failing ~~which~~ which arb-

which arbitration may be resorted to.

Under the order of this Govt. relating to supply generated by means of steam the surcharge is to be levied with the previous approval of Govt. on consumers under special contract. and it is not competent for such consumers to terminate the contract on the ground only of the levy of surcharge under the order. Similar provision is suggested by the Committee to be made in respect of the order relating to the supply generated by diesel oil to consumers under special contract.

Clause 5 of the G. of I. draft order contains a proviso that no war costs surcharge shall be effective upon charges for the supply of energy under any contract entered into after 1st May 1942, unless such contract provides for the same charges as have been contained in similar previous contracts for similar supply, or unless and to such extent as such application may be expressly ordered by the Provincial Govt.

This proviso would enable Govt. to examine cases of special contracts individually and give decision without resorting to arbitration.

5. It is considered that the draft order proposed by the G. of I. are calculated to safeguard the interest of the licensees and the consumers alike and do not contain any of the drawbacks subsequently discovered in the order No. 604 I/36 dated II-9-43

issued by this Govt. particularly in respect of special contracts and street lighting. The orders of this Govt. do not sufficiently safeguard the interests of the consumers, it being open to the licensees to levy the maximum surcharge if they so desire. For these reasons it may be advisable to cancel the two orders issued by this Govt. and to issue a fresh order on the lines of the draft order as proposed by the G. of India. It may however be suggested that in clause 4 (I) of the draft order "15 per centum" may be replaced by $33 \frac{1}{3}\%$ per centum for energy generated by Diesel oil and 10 per centum for energy generated by steam. A max. limit of $33 \frac{1}{3}$ per cent was originally proposed for diesel oil generated energy after careful consideration by the El. Engr. to Govt. Similarly a max. limit of 10% may be retained in the case of energy generated by steam. There are only a few such cases and no complaints re. inadequacy of the surcharge have been recd. so far. As regards the limit of surcharge for energy generated by hydro-electricity I think the El. Engr. to Govt. may advise.

If the suggestion at A is accepted it would not be necy. to issue the order mentioned in the concluding portion of subpara (v) of para.4.

gk/29³/44

The note ^{of the} ~~of the~~ Dy. Secy. (I & R) makes the position clear.

I think we may act as suggested in this para 5. Cancel our present orders and issue simultaneously a

a new order *in my view* of that suggested by the G. of I. but retaining our own percentages. The El. Eng. to G. may advise whether any sur-charge ^{is} necessary for hydro-electric Coy's. and if so what it should be.

Papers are submitted to A(R) *at this* stage for information with reference to the note dated the 21/3/44.

sd/- 6.4.44.

A (R)

I agree with the course suggested by Dy. Secy. and as amplified in Addl. Secy's note.

2. It is embarrassing that the Govt. of India, writing one year after we passed the order allowing 33 $\frac{1}{3}$ % surcharge, consider that only a maximum of 15% is justifiable. I have been through that ~~information~~ unfortunate file again and it would appear,, that the surcharge arose only from an application by the Nipani and Sinnar Companies, although I see reference in subsequent pages to a deputation of the Association which waited on Government, and I expect there are other papers about that.

I note Addl. Secy's now (Secy 's) remark on page 21. The branch concerned appears not to have started to note on the G. of I.'s letter recd. ~~at~~ on 11-3-44 until I drew attention to its receipt on 21-3-44.

3. I agree , however, that we cannot, merely by cancelling our order of March 1943 and substituting for it the Order now to be issued, revise to 15% the 33 1/3% surcharge which has been imposed by some companies as a result of the order of 1943.

4. (a) I do not know how many companies have in fact imposed that surcharge and how many have not done so or imposed lesser surcharges as a result of our Circular of September 29th 1943 (afterwards found to be legally untenable), in which it was suggested that the maximum should not ordinarily be charged and that the surcharge should not apply to special contracts. I suppose the Electrical Engineer can supply this information.

(b) Presumably we shall now go into all the outstanding cases on the applications of the Companies which ~~have~~ have not yet imposed the surcharge or imposed lesser charges and decide their cases on merits. I should like in practice to keep within 15% as far as possible, but this may be difficult when the cases are similar to ~~those~~ those in which 33% has already been imposed. The main point is, however, to get the new Order issued as early as possible, since I take it that so long as the existing Order is in force, any Company can hastily impose 33 1/3% if it realises that our letter on page 125 of file 604I/36 has no legal force.

P. 125 of file 604I/36
(Or will Coys.
(which have
(imposed that
(surcharge also
(have to put
(in applic-
(ation so as
(to bring them
(under the
(new Order ?

5. We should therefore treat the matter as very urgent, although I agree we must allow ourselves one month and not 15 days to decide applications. But Electrical Engineer will have to devise machinery to deal with applications as soon as they come in and think out the general policy on ~~which~~ which they should be decided.

6. Although I agree that we cannot definitely exclude hydro-electric concerns from the Order, I think we should register the policy of not allowing any increase in their case, if it can be avoided.

7. Another point is that if, as we must presumably do, we issue the new Order without consulting the Association of Electrical Undertakings, it will raise the same grievance as on the last occasion (page 133 of File 604I/36). But I suppose we can say that, since it is a standard Order suggested by the G. of I. which will presumably apply in every Province, we adopted it for the sake of uniformity in this Province and therefore the question of consultation did not arise. Probably this would best be explained to the Chairman personally at the time of issuing the Order.

Secy. P.W.D. (Irrig.).

Disposal of this case without any delay. JS 10/4/44

JS 9/4/44
633I/36
7066

P.W.D.

El. Branch.

Resubmitted with reference to the notes within.

2. The information refd. to in para. 4 (a) of A(R)'s note is not available in this office. As regards para. 4 (b) it is observed that under the proposed Order all Coys. (including those which may be levying surcharge under the two present orders of Govt.) will have to make a declaration individually whether a war cost surcharge is desirable in their case and to

to suggest the rate which they consider desirable supported by calculations as prescribed in the Order and the new rate will supersede the existing rate.

3. The El. Engr. to Govt. may be requested to furnish the information refd. to in para 4(a) of A(R)'s note. He may also be requested to advise re: the rate of surcharge in the case of hydro-electric Coys. and to note portion 'A' or para. 5 of A (R)'s note.

It is suggested that the Coys. should be asked to submit the requisite applications thro: the El. Engr. to Govt. who may pass on each application to Govt. with his recommendations, within 15 days of its receipt in this office, leaving the remaining 15 days to Govt. for the issue of the necessary orders.

4. A draft order is put up for approval subject to the following remarks:-

(a) Besides the licenses granted under Section 3 of the I.E.Act, there are at present two sanctions granted under section 28 of that Act. The draft order has therefore been worded to include the sanction holders also.

(b) In view of para. 5 of A(R)'s note provision is made in clause 3(I) of the draft order for submission of the requisite declarations thro: the El. Engr. to Govt. vide in this con. para. 3 above.

(c) The maximum limit of 15% for the war costs surcharge fixed by the G. of I. in clause 4(I) of their draft order has been omitted and is replaced by 33.1/3% and 10% in the case of undertakings using diesel oil and steam for the generation of electrical energy, respectively.

The figure of maximum percentage in the case of undertakings using hydro-electric power has been left blank and will be filled in after the El. Engr. to Govt. has advised what that percentage should be.

(d) In view of remarks in para. 5 of A(R)'s note the time limit of 15 days for the issue of orders by Govt. fixed by the G. of I. in para. 4 of their draft is proposed to be altered to 30 days and consequential change (60 days instead of 45 days) is proposed in clause 7 of the order.

(e) Clause 7 of the draft order suggested by the G. of I. is proposed to be amended so as to make it clear that the existing surcharges imposed by the licensees under the two Govt. orders will be withdrawn upon fixing the new rate of surcharge by Govt. or 60 days from the commencement of the proposed order whichever is earlier.

The effect of this provision is that the surcharges levied under the present orders of Govt. will be automatically withdrawn in all cases after 60 days from the commencement of the proposed order.

5. As proposed above, the ~~papers~~ papers may first be refd. u.o. to the El. Engr. to Govt. On their return from him they will be referred to the F.D. and the R.L.A. before submission to A(R).

Yes
90.
12/4/44

20R to the Electric Engr before 13/4/44

JP
12-4

915
12/4

x with notes
1 6041/36
2 3053/36
3 4408/36
4 5561/36
5 5224/36 p.1

Submitted with refce. to the O.N. dated 12-4-44.

2. In the case of undertakings where Hydro-El. power is used the El. Engr. to Govt. recommends that they be omitted from the scope of the proposed order obviously because of the satisfactory financial position of those Coys. Attention in this connection is invited to para. 6 of A(R)'s note and it is for consideration whether the El. Engr's recommendation~~s~~ may be accepted. It is suggested that the opinion of the Examiner, Outside Audit who audits the annual accounts of the Coys. for this Govt. may perhaps first be obtained on this point through the A.G., Bombay and the latter may also be requested to offer remarks with refce. to the suggestion made by the El. Engr. in para 3 of his note.

In case the Examiner, Outside Audit, is of opinion on that the Hydro-El. concerns should be included in the proposed order he may also be requested to suggest the maximum percentage of surcharge which should be fixed.

JK 20/4 ^{VR} 20/4

As regards para. 4 of A(R)'s note (P.29), the information available with the E.E. to Govt. is incomplete. There seems to be no necessity of collecting this information as far as the proposed Order is concerned. All El. Supply Co's will be **required**, under clause 3(I) 6 of the draft Order to declare their War Cost Surcharges and submit calculations in support thereof. Hence such licensees

who have already levied an unreasonably heavy surcharge up to the limit of 33 1/3 %, will have to reduce the rate of surcharge unless they can justify it by calculations.

2. Para.6 of A(R)'s note. From the report of the E.E. to Govt. it does not seem necessary to include Hydro-Electric concerns in the proposed order. The El. Engr. has pointed out that Kalyan E.S. Co. is the only doubtful case. As all the other Hydro-Electric concerns appear to be doing well (vide statement P.4I) it is not understood why this Co. alone is showing a deficit, particularly when it has made a profit in that year. The E.E. is investigating ~~this~~ this further. The ~~the~~ following amendment to the draft order would be necessary. Below item (3) of para. I add "(4) This order shall not apply to undertakings (supplying electrical energy generated by hydraulic power (is used for the generation of electrical energy) then (c) of para 4(I) will have to be deleted.

/ J. R. M.
28/4/44

3. Para 5 of A(R)'s note. Attention is invited to the note ^{P.15} on clause 4(I) in the appendix accompanying the G. of I. letter containing the proposals to levy the War Cost Surcharge. It would be never the less desirable to have assistance from the Examiner, Outside Audit Bombay in roughly scrutinizing the calculations submitted by the Cos. Reference may be made to the A.G. about this when the Draft Order is ready for publication.

/ This may be
considered in
due course
S
28/4

4. Para. 7 of A(R)'s note. The suggestion made by the E.E. to Govt. in para 5 of this u.o. (page 43) may be accepted.

5. The papers may be now referred F.D. & R.L.A. before submission to A(R).

Sd/-
21.IV.44.

Secy. Irr

Manager

I agree with Dy. Secy. (IOR): No, useful propose would be served by consulting the Examiner Outside Audit at this stage.

I agree that it would be advisable to put the final order before the Committee sanctioned by the El. Engr. to *Government* before actually issuing it.

Sd/-
21-4-44.

Sd/-
22.IV-44.

V. Urgent.

U.O.R. to the F.D. and the R.L.A. (in succession) of 24th April 1944.

x' with rules
(1) 6041/36
(2) 3053/36 II
(3) 6508/36
(4) 5961-36 (loose papers)
(5) 5224/36-I

Finance Department - D.

Seen and passed on the the R.L.A.

Sd/- 25.4.44.

* 8.3584 26 6041/36

In the draft order suggested by the Government of India a maximum surcharge of 15% was stipulated. The P.W.D., however, proposed to raise the maximum limit to 33 1/3% in view of the provisions of the

~~* P.35, P.W.D. File 6041/36~~

of the P.W.D. Order dated II-3-43 which permits a surcharge upto that limit.. It is apparently considered that it would be difficult for the companies which have already levied a surcharge in excess of 15% to reduce it to 15%. It is, however, not quite clear from these papers whether any company has actually levied a surcharge of more than 15% and the Electrical Engineer to Govt. has not supplied any information on this point as the information available in his office is stated to be incomplete. It may perhaps be possible for the Electrical Engineer to state without further enquiries whether any companies have levied a surcharge in excess of 15%, and if so, what the maximum surcharge so far levied is. If the maximum surcharge levied so far is less than 33 1/3% it would be feasible to fix the maximum percentage at this lower figure. Unless a surcharge of 33 1/3% it would not be necessary to raise the maximum percentage to this figure.

It is shown that some companies have actually levied

2. P.W.D. may be requested to elucidate the points raised above.

3d/-

27.4.44.

U.O.R. to the P.W.D. dated 27.4.44 with F.P. mentioned pre page.

PUBLIC WORKS DEPARTMENT.

Bombay Castle, 16th June 1944.

O R D E R .

No.633I/36.- In exercise of the powers conferred by rule 8I- of the Defence of India Rules, the Government of Bombay is pleased to make the following Order:-

I. (1) This Order may be called the Bombay Electricity Supply (Licensed Undertakings' War Costs) Order, 1944.

(2) It shall come into force at once.

(3) It extends to the whole ~~XXXXX~~ ~~at XXXX~~ of the Province of Bombay.

(4) It shall not apply to undertakings where hydraulic Power is used for the generation of electrical energy.

2. In this Order, unless there is anything repugnant in the subject or context, expressions shall have the meanings assigned to them in the Indian Electricity Act, 1910, or in the Excess Profits Tax Act, 1940.

3. (1) Every licensee and every person supplying electrical energy with the sanction granted under section 28 of the Indian Electricity Act, 1910, (hereafter referred to as sanction holder) shall, within 30 days from the commencement of this Order submit a declaration to the Provincial Government through the Electrical Engineer to Government, Bombay, stating whether in his opinion a War Costs Surcharge in terms of this Order is or is not desirable in the case of his undertaking. In the event

of a licensee or a sanction holder declaring that such a surcharge is in his opinion desirable as aforesaid he shall also by a writing submitted to the Provincial Government, through the Electrical Engineer to Government .

(a) declare the rate of the War Costs Surcharge which he deems desirable, calculated in accordance with this Order;

(b) append the relevant calculations showing how the rate of the War Costs Surcharge which he deems desirable has been arrived at;

(c) certify that the aforesaid calculations are correct to the best of his knowledge and belief;

(d) agree to execute the undertaking set out in the Second Schedule to this Order in accordance with such demand as the Provincial Government may, in pursuance of clause 6, think fit to make;

(e) state whether he considers that the Provincial Government should waive the execution of the aforesaid undertaking or clause (a) thereof, and, if so, for what reasons.

(2) Every War Costs Surcharge shall be calculated on overall charges of the licensee or sanction holder concerned for the supply of energy before deducting rebate for prompt payment and expressed as a percentage of such charges:

Provided, firstly, that every War Costs Surcharge shall be expressed in terms of a percentage of Overall charges of the licensee or sanction holder concerned for the supply of energy before deducting rebate for prompt payment and shall be for application equally to all such charges except as set out in the second proviso to clause 5.

Provided, secondly, that no War Costs Surcharge shall exceed a rate which will in estimate result in increasing the gross revenue of the undertaking of the licensee or sanction holder concerned approximately by the amount of the costs which may be taken into account in calculating the said rate under the First Schedule to this Order, plus any amount which may be taken into account in accordance with clause 8 less any amount which is to be taken into account in accordance with the undertaking contained in the Second Schedule to this Order.

Provided, thirdly, that all calculations for arriving at a rate of War Costs Surcharge shall take as a base the best available evidence of relevant expenditure and revenue from sales of energy.

4. (1) Within 30 days from the receipt of a declaration under sub-clause (I) of clause 3, the Provincial Government shall, if a War Costs Surcharge is considered by the licensee or sanction holder to be desirable, by order fix the rate of War Costs Surcharge in respect of the undertaking of that licensee or sanction holder as the case may be, at the declared rate or at the following percentum, whichever is less, namely:-

(a) 33 $\frac{1}{3}$ percentum in the case of undertakings where diesel oil is used for the generation of electrical energy,

(b) 10 percentum in the case of undertakings ~~in~~ where steam is used for the generation of electrical energy.

Provided that the Provincial Government may at any time after passing such an order cause an enquiry to be made into the propriety of the calculations of the licensee or sanction holder concerned by which such declared rate has been computed and may order revision of the fixed rate if in its opinion the said calculations are improper:

Provided further that the Provincial Government may, from time to time, after such enquiry (if any) as it may think fit to cause to be made, enhance the rate fixed under this clause.

(2) No person other than the Provincial Government or the person authorised by it to make an enquiry under the provisos to sub-clause (I) shall be entitled to enquire into the propriety of the calculations leading to the fixation of a War Costs Surcharge.

5. Upon the rate of a War Costs Surcharge being fixed by the Provincial Government from time to time in accordance with this Order, it shall not be lawful for the licensee or sanction holder concerned to supply energy at other than charges surcharged at the rate for the time being so fixed:

Provided that no War Cost Surcharge or any subsequent upward revision thereof shall be effective upon charges contained in any bill covering any energy supplied before the date of the making of the relevant order by the Provincial Government.

Provided further that no War Costs Surcharge shall be effective upon the charges for the supply of energy under any contract entered into after the 1st May 1942, unless

such contact provides for the same charges for energy as have been contained in similar previous contracts for similar supply by the licensee or sanction holder concerned (as to which in the event of dispute by any party interested, the decision of the Provincial Government shall be final) or, unless and to such extent as such application may be expressly ordered by the Provincial Government.

6. Upon demand by the Provincial Government after a rate of War Costs Surcharge has been fixed under sub-clause (I) of clause 4; the licensee or sanction holder concerned shall execute an undertaking in the form set out in the Second Schedule to this Order and file it with the Provincial Government:

Provided that the Provincial Government may waive the execution of clause (a) of the said undertaking either wholly or partly, if in its opinion the effect would be unduly repressive.

7. Any existing surcharges applied by a licensee or sanction holder under the provisions of the Orders issued in Government Notifications, Public Works Department No. 6041/36, dated the 11th March 1943 and to his charges for the supply of energy shall be withdrawn upon the fixing of a rate of War Costs Surcharge applicable to his undertaking under this order or after 60 days from the commencement of this order, whichever is earlier.

own Dece-
ember 1943.

8. In the event of any restrictions in the use of consumption of electrical energy imposed for securing the defence of any part of British India or for the efficient prosecution of the war or for maintaining supplies and services essential to the

life of the community having materially reduced the return on capital employed in any undertaking, the licensee or sanction holder concerned shall be permitted to take the future estimated effect of such reductions wholly or partially into account in calculating the rate of War Costs Surcharge under sub-clause (2) of clause 3.

9. (10) The Provincial Government may from ~~xx~~ time to time on application by a licensee or sanction holder fix by order revised charges and conditions in respect of the licensee's or sanction holder's maintenance of street lighting equipment under any contract, having regard to all relevant circumstances which in the opinion of the Provincial Government should be taken into account for the purpose.

(2) For purposes of application of a War Costs Surcharge and for the purpose of this Order including clause 5 a licensee's or sanction holder's charges for maintenance of street lighting equipment shall be deemed to be charges for the supply of energy.

10. The provisions of this Order shall apply notwithstanding anything contained in any other law or in any license or sanction granted under the Indian Electricity Act, 1910, or in any contract or requisition for the supply of energy or in any contract covering the maintenance of street lighting equipment.

THE FIRST SCHEDULE.
(To be read as forming part of the second proviso to sub-clause (2) of clause 3.)

The cost which may be taken into account in calculating the rate of War Cost Surcharges.

The amounts of the detailed in Column which may be recovered.

(a) Costs which it is estimated will be incurred after the date on which War Costs, Surcharges (or any subsequent revision thereof) are imposed and in respect of:-

(1) War Riks Insurance.

(2) War Induries Insurance

(3) Dearness Allowance to Staff

(4) Increased cost of maintenance materials properly debitable to current revenue.

(This shall be calculated for any period by multiplying the estimated number of units generated in that period by the difference between (a) the estimated maintenance materials cost per unit generated in the same period and (b) the actual maintenance materials cost per unit generated in the corresponding period of the Licensee's or sanction holder's Accounting Year ending in 1939.

(5) Increased cost of Fuel.

(a) All or part, in the discretion of the Licensee or sanction holder after deducting any amount estimated to be recoverable by the continued operation of increases in or surcharges on the charges for supply of energy as at 31st December 1939, or by the terms of any existing contract for the supply of energy.

(This shall be calculated for any period by multiplying the estimated number of tons consumed in that period by the difference between (a) the estimated cost per ton consumed in the same period and (b) the actual cost per ton consumed in the corresponding period of the Licensee's or sanction holder's Accounting Year ending in 1939.)

(6) Increased cost of energy purchased from bulk suppliers

(This shall be deemed to be for any period the difference between (a) the cost calculated at the bulk supplier's tariff applicable of the estimated amount of energy purchased at the estimated demand and power factor during that period and (b) the amount which the same quantity of energy at the same demand and power factor would have cost calculated at the bulk supplier's tariff applicable in the corresponding period of the Licensee's or sanction holder's Accounting Year ending in (/ 1939.)

(b) Costs which were incurred prior to the date on which War Costs Surcharges are first imposed and in respect of:-

- (1) War Riks Insurance.
- (2) Dearness Allowances to Staff.
- (3) Increased cost of maintenance materials properly debitable to current revenue.

(This shall be calculated for any period by multiplying the actual number of units generated in that period by the difference between (a) the actual maintenance materials cost per unit generated in the same period and (b) the actual maintenance materials cost per unit generated in the corresponding period of the Licensee's or sanction holder's Accounting Year ending in 1939.

(b) So much of the balance after deducting any amount estimated to have already been recovered by the operation of increases in or surcharges on the charges for supply of energy as at 31st December 1939, or the terms of any contract for the supply of energy, as the Provincial Government may arise.

(4) Increased cost of Fuel.

(This shall be calculated for any period by multiplying the actual number of tons consumed in that period by the difference between (a) the actual cost per ton consumed in the same period and (b) the actual cost per ton consumed in the corresponding period of the Licensee's or sanction holder's Accounting Year ending in 1939.

(5) Increased cost of energy purchased from bulk suppliers.

(This shall be deemed to be for any period the difference between (a) the cost, calculated at the bulk supplier's tariff applicable of the actual amount of energy purchased at the actual ~~amount~~ demand and power factor during that period and (b) the amount which the same quantity of energy at the same demand and power factor would have cost calculated at the bulk supplier's tariff applicable in the corresponding period of the Licensee's or sanction holder's Accounting Year ending in 1939.

THE SECOND SCHEDULE.

(See clause 3 (I) (d) and 6.)

The Electric Supply Co. Ltd., the Licensee / sanction holder under the Electric Licence / sanction hereby declares,

(a) That if at any time the Company's Undertaking is assessed to Excess ~~Profit~~ Profits Tax in any chargeable accounting period ending subsequent to the date a War Cost Surcharge is first fixed under the Bombay Electricity Supply

Supply (Licensed Undertakings' War Costs) Order, 1944, then the amount of the Excess Profit, after deduction of taxation due thereon, will be recorded and the Company will specially reduce the charges for the supply of energy so as to result in an estimated reduction of gross revenue by an approximately equivalent amount during the next succeeding two Accounting Periods following upon the completion of the relative assessment.

Alternatively, if the Government and the Company agree that such a special reduction of the charges for the supply of energy would, on account of other factors, result only in a temporary variation, or that the reduction would be negligible, the recorded amount will be placed by the Company to a Reserve to be called the "Rates Stabilisation Reserve" and this reserve will be taken fully and fairly into account in determining the magnitude of any subsequent revision of War Cost Surcharges or charges for supply of energy whether upwards/downwards.

(b) That if at any time during the enforcement of the taxation provisions of the Excess Profits Tax Act, 1940, the Company's Undertaking in any Accounting period ending subsequent to the date of War Cost Surcharge is first fixed under the aforesaid Order, earns profits exceeding 7 per cent of the average amount of Capital employed in the business during that period, then the amount of the excess, after deducting any

any smaller amount recorded or set aside to ~~xx~~ Reserve in terms of clause (a) of this undertaking and the taxation due on such excess, will be taken into account to reduce the charges for supply of energy or be set to the "Rates Stabilisation Reserve" in the same manner and on the same terms as are set out in the said clause (a).

By order of the Governor of Bombay.

sd/- R.H. Hammett.

Secretary to Government.

VR.20/5

20/5/44.

El. Br.

P.W.D

Submitted with refce. to the O.N. dated the 10.5.44.

2. A clean copy of the draft orders as amended by the R.L.A., is put up for submission to A(R) with refce to his note, dated the 9-4-44.
3. Para. 4 (a) of the A(R)'s note: It will be seen from the information furnished by the El. Engr. to Govt. that out of 47 licensees generating energy by means of diesel oil 42 are levying surcharge at the maximum percentage fixed by Govt., viz. 33 1/3 %, and four at a rate below the maximum percentage. No surcharge is at present being levied by one licensee viz. The Sanad El. Supply Coy,
4. Para. 4(b) of the A (R)'s note; Attention is invited to para.2 of the O.N. dated the 12.4.44 and para.I of the Dy. Secy's note dated the 21.4.44. All licensees will be required under clause 3 "(b) of the draft order to declare their War Cost Surcharge and to submit calculations in support thereof. Hence the licensees who are levying surcharge at the maximum percentage of 33 1/3 % will have to reduce the rate of surcharge unless they can justify it by calculations. The new rate will supersede the existing rate.
5. Portion 'A' in para.5 of A(R)'s note:
 Attention is invited to -
 - (1) Para. 3 of the O.N. dated the 12.4.44.
 - (2) Para. 3 of the El. Engr's memo. dated the 19.4.44.
 - (3) Para. 3 of the Dey. Secy's note dated the 21.4.44 and the orders of the Secy. (Irrgn.) thereon.

Action taken separately Examiner Outside Audit has agreed to give the necessary Audit help.

A refce. will be made separately to the A.G., ~~RM~~ Bombay, for the audit help, after the proposed draft is approved by the A(R).

6. Para. 6 of the ^{A(R)'s} ~~AAAR~~'s note: In view of the report of the El. Engr. to Govt. it is not considered necy. to include the Hydro-El. concerns in the proposed draft order - vide para. 2 of the Dy. Secy's note dated the 21-4-44 agreed to by the Secy. (Irrign.)

7. Para. 7 of A(R)'s note: It is considered advisable to put up the draft order, as finally approved, before the Committee vide G.R. No. I932/36, d/-the 19-10-1942 appointed to advise Govt. on details arising from the control of the supply of ely. due to the rationing of ~~the supply~~ diesel oil, before it is published, as suggested by the El. Engr. to Govt. vide Secy. (Irrign)'s note dated the 22-4-44.

633I/36/I3722 *

8. The remarks in para. 2 of the R.L.A.'s note reg. the cancellation of the orders in G.Os. No. 604I/36, dated the 11-3-43 and No. 3053/36, dated the 8-12-43, after 60 days from the commencement of the proposed order are noted and action will be taken accordingly at the appropriate time.

20/5/44

VR.20/5

The Draft order after it is seen and approved by A(R) will be sent to E.Z. I. to Govt. for showing it to the committee referred to in para 7 of the O.N. above,

9d/- 22.V.44.

A(R) C.H.B. 22-5-44.

X *
U.O.R. to the El. Engr. d/ 23rd May 1944.

- X * with
- (i) six spare copies of the draft order.
 - (ii) File 6041/36
 - (iii) " 6508/36
 - (iv) " 3053/36 PEI
 - (v) " 5224/36 PEI
 - (vi) Loose papers
5961/36
13575
 - (vii) Loose papers
1932/36
3360

(El. Br.)

Submitted with refce. to the notes on PP.
75-76 ante.

2. The advisory committee has suggested two amendments to the draft order viz.-

(i) that clause (a) of the second schedule to the draft order may be recast as suggested by it at / 'A' on p. 77 ante,

and

(ii) that '15 per centum' be substituted for '10 per centum' in clause 4(I)(b) of the draft order.

3. Orders are solicited whether the proposed amendments may be accepted.

4. Reg. (i) above it is observed that the amendment differs from the original ~~that the~~ clause of the draft order suggested by the G. of I. in following respects, viz:-

(a) The amended clause provides for the reduction of charges for the supply of energy on the conclusion of the excess profits Tax Act whereas the original clause provides for such reduction during the continuance of that Act;

(b) the amended clause further does not provide for taking the stabilisation Reserve into account in determining the magnitude of any subsequent revision of war cost surcharges as the original clause does.

Attention in this connection is invited to ~~this~~ this proviso to clause 6 of the draft order.

If the amended clause is to be accepted it seems it will be necy. to consult the G. of I. in view of their observations in the Appendix under the heading "General". The point is however for orders.

5. Reg. (ii) attention is invited to the observations of the G. of I. in the Appendix under the heading 'clause 4(I) and provisos'. If in the case of an undertaking where steam is used for the generation of electrical energy Govt. is satisfied that surcharge in excess of 10 p.c. is necy. Govt. can issue a revised order fixing the rate at a higher figure.

6. The F.D. may be consulted with refce. to the proposed amendments before submission to A(R).

GR
2/vi/44.

9d/-
2/6/44.

The suggestion for modifying clause (a) of the Second Schedule if adopted would run counter to one of the objects aimed at by this Draft bill namely, to provide no incentive to take unfair advantage of by the levy of unreasonable surcharges. The Excess Profits Tax Act., is to be used as a means of control for ensuring this object. It is not known for how long the Excess Profits Tax will continue to be levied. It is quite within the bounds of possibility that it may be continued for a number of years, and it would not be just to deny the consumers the benefit of reductions in the surcharge indefinitely.

As regards the second suggestion for substituting 15 per centum instead of 10 per centum in the case where steam is used for the generation of electricity, there seems to be no objection to accept it. The rates of Surcharge in each case will be governed by the provisions in the Second Schedule to the Act.

- 2 -

I agree with Dy. Secy. (IOR). I do not think we should accept the *modification* of clause (a) of the second schedule.

The charge from 10 % to 15 % may be allowed since before any increase in surcharge can be made it less to be fully justified.

Sd/-
3/6/44.

X Correct the Draft
order accordingly.
E.D. may see.

Sd/-
5-VI-44. *Sm Sir*
9/5/44

^x
u.o.r. to the F.D. dt. 6th June 1944.

x with files -

- (1) 6041/36
- (2) 5224/36-I
- (3) 3053/36-II
- (4) 6508/36
and loose papers
(papers)
- (5) 1932/36/3360
- (6) 5961/36/13575.

Finance Department.

File No.

6 June 1944 D.

Finance Department (D.Br.)

Submitted with reference to the office note dated 1.5.44.

2. The P.W.D. at the instance of the Committee appointed to advise Government on details arising from the control of the supply of Electricity due to the rationing of diesel oil, has proposed to raise the limit of surcharge from 10 % to 15 % in the case of undertakings using steam for the generation of electrical energy. The present limit of 10% has been laid down in the Order issued by the P.W.D. under rule 81(2) of the Defence of India Rules - vide G.D., P.W.D. No.3053/36, dated 8-12-43.

3. There appears no objection to raise ~~ex~~ the limit to 15% in order to allow more latitude in the matter of surcharge. The maximum rate cannot be levied by an electrical undertaking unless it is justified by calculations to be made in accordance with the principles laid down in the First Schedule and the second proviso to sub-clause (2) of clause 3 of the proposed Bombay Electricity Supply (Licensed Undertakings' War Costs) Order, 1944. Hence this Deptt. may agree to the limit being raised from 10% to 15% in para.4 (I)(b) of the draft Order as proposed by the P.W.D.

Sd/- mm
8.6.44.

MS
8/6/44

u.o.r. to the P.W.D. dated 9.6.44,
with full f.p. marked on p.82.

El.Br.

P. W. D.

Submitted with refce. to the notes on pp.
ante.

2. F.D. has agreed with this Deptt's proposal to the limit of 10% in clause 4(I) (b) of the draft order being raised to 15%. The draft order as amended may now issue after submission to A(R).

3. The Draft letters put up may also issue if approved.

ID/I2.6.44.

ID/ I2.6.44.

VR.I2/6.

MR I agree on all points subject to ~~A(R)~~ para 3 below.

2. It has after all taken more than 2 months to publish the order since my first note, which seems unfortunate. In the meantime licensees have had full scope to impose up to 33% which I wished to ~~was~~ *avoid*. The list on page 55 shows that the majority of Coys. have already imposed 33½%.

3. Page 77 shows that the proposal to substitute 15% to 10% for steam emanated from the representative of Messrs. Killick Nixon, which is the only such large lay out of 2 or 3 concerned.

It is time that we need not allow 15%, but it may be difficult to justify it, if 33% is allowed freely to other concerns. So far as I know, there has been nothing to show that 10% so far allowed is inadequate. We may therefore adhere to that figure.

4. I hope Elect. Eng. will now get on to examination as soon as possible. It seems that he must have some

preconceived policy and principles on which to
base his recommendations in each case and that
this must be on some relation to profits. On
general grounds I would refer to our letter on
page II7 of File 604I/36 in which we ~~Expressed~~.
I hope that most licensees would not impose full
surcharge (it turned out to be legal unten-
able), made it clear that we expected 33%
to be rare. That has turned out to be of no
effect. It did however suggest some principles
for justification. I think it will be advisable
for Secy. to ~~discuss~~ *discuss* with E.E. the policy
on which he will deal into affliction before
he considers them.

ec. M-D. (IOR) 13-6-44.

ID/-

Note on the operation of the Bombay Electricity Supply (Licensed Undertakings' War Costs Order 1944).

OBJECT.

I. The object is to compensate the licensees for the rising expenditure in respect of War Risk Insurances, dearness allowances to staff, purchase of fuels and maintenance materials and restriction in the use or consumption of electrical energy.

2. The costs which may be taken into account in calculating the rate of War Cost Surcharge are:-

(a)

- | | | |
|--|---|----------|
| (1) War Ris. Insurance. |) | Vide |
| |) | first |
| (2) War Injuries Insurance. |) | schedule |
| |) | to the |
| (3) Dearness allowances to staff. |) | order. |
| |) | |
| (4) Increased cost of maintenance Materials properly debitable to current revenue. |) | |
| |) | |
| (5) Increased cost of fuel. | | |
| (6) Increased cost of energy purchased from bulk suppliers. | | |

The increase with reference to items (4), (5) & (6) above is to be calculated, as given in the first schedule, on the basis of the cost for the relevant items in the licensee's accounting year ending in 1939. The amount which the licensee may have already recovered by way of increase in the charges for the supply of energy as at 31st December 1939 or by way of existing surcharges is to be deducted and the balance only taken into account for the new surcharge.

(b)

In addition to the above costs the licensees may take into account the estimated effect of reductions imposed in the supply of energy under the Defence of India Rules - vide clause 8 of the Order.

authy
THE COSTS
WHICH ARE
TO BE TAKEN
INTO ACCOUNT
IN THE RATE
OF WAR COST
SURCHARGE.

THE RATE
OF WAR
COSTS
SURCHARGE.

3. The rate of surcharge is not to exceed a rate which will in estimate result in increasing the gross revenue of the undertaking by the amounts mentioned at (a) and (b) in the ~~xxx~~ preceding paragraph less the amount of excess profit taken to 'Rates Stabilisation Reserve' or utilised in reducing the rates of energy under the second schedule to the Order - vide clause 3(2) of the Order.

4. Under clause 4(I) of the Order Government has to issue an Order, within 30 days from the receipt of the licensee's declaration, fixing the rate of war cost surcharge in respect of the licensee's undertaking at the rate declared by the licensee or at the per centum mentioned in ~~the xxx~~ the clause whichever is less. If the licensee's declared rate is considered unreasonable Government may order its revision later on after detailed enquiry into the propriety of the licensee's calculations leading to the rate declared by him.

5. As soon as the licensee's declaration regarding the War Costs Surcharge is received with the relevant calculations the first thing would be to examine whether the calculations submitted by the licensee leading to the rate declared by him are reasonable. No detailed enquiry is necessary at this stage - vide in this connection Government of India's observations in the Appendix under the heading 'clause 4(I) and provisos.'

Issue of the order
fixing the rate of
War Costs Surcharge

33 1/3 % in the
Case of undertaking
where diesel-oil
is used for the
generation of electric
energy, in the
Case of undertaking
where steam is
used for the
generation of the
Electric energy

The procedure
has been followed in
issuing the order in
each case.

The next stage is to issue an order fixing the rate of War Costs Surcharge ~~at~~ the rate declared by the licensee or at the percentum mentioned in the preceding paragraph whichever is less.

If in the preliminary examination it is found that the licensee's calculations leading to the rate declared by him are not reasonable a detailed enquiry is to be made and the rate already fixed is to be revised, if necessary.

6. The Order provides power to Government to fix the revised charges and conditions in respect of the licensee's maintenance of street lighting under any contract on application by the licensee. - vide clause 9(I) of the Order.

PROVISION
FOR THE
REVISION
OF CHARGES
AND CONDI-
TIONS IN
RESPECT
OF LICEN-
SEE'S
MAINTENANCE
OF STREET
LIGHTING
EQUIPMENT.

ID/ 20.6.44

VR.20/6.

El. Br.

P.W.D.

Submitted.

2. The Govt. Order and the letters within have been issued. The papers are now submitted with refce. to para. 4 of A(R)'s note, dated the 13-6-44 and para.3 of the Secy's note, dated the 14-6-44.
3. The Secy's note of 13th June 1944 has since been returned by the El. Engr. to Govt. with his remarks on p. ^{1/} ante. . .
4. The papers may be refd. u.o. to the El. Engr. to Govt. with refce. to the Secy's instructions reg. personal discussion on the procedure proposed to be adopted by him in dealing with the Coys. applications. A note on the operation of the Order is put up by office in this connection within.

Thro.A.E.(I)

ID./20-6-44.

ID/ 20-6-44.

VR.20/6.

The E.E. to Govt. has already discussed with the Examiner Outside Audit and has nothing specific to discuss with the Secy. (I asked him) . It is therefore not necessary ^{to} refer the case back to him (the E.E. to Govt.)

2/- The case is now submitted to the Secy. (Irr.) for information.

3/- With ref. to the position marked A in the El. Eng's. letter on page 101 ante, attention is invited to clause 4(2) of the Bombay El.

El. Supply Order, 1944 (p.94), according to which "no person other than the Prov.Govt. or the person authorized by it to make an inquiry under the provisions of sub-clauses (I) shall be entitled to inquire into the ~~propriety~~ propriety of the calculations, leading to the fixation of the War Costs Surcharge. It would be therefore irregular to refer either to the Supply Co. or the Committee for any advice in the matter of fixation of the War Costs Surcharge. There is going to be a double check, once by the E.E. to Govt. and the Examiner D.A. jointly and then by the Secretariat. A further reference to another party is merely going to delay things and as time limits have been fixed for declaration of the War Costs Surcharges this would not be practicable either.

4/-The order gives scope for revision of the rate of surcharge and it will be possible to consider appeals from the licensees in case they consider that the surcharge has not been fixed correctly.

ID. 20.VI.44.

Secy.Irr.

I am not satisfied with the very brief and vague note of the El.Engr. to Govt. It in no way complies with the wishes of A (R).

2. The Secretariat note is far more fully detailed and supplies most of the information necessary but it has not been seen or accepted by the El.Engr. to Govt.

3. I agree that the proposals marked 'A' in the El. Engr. to Govt.'s note cannot be accepted or allowed as they are not in accordance with the order.

4. It appears to me that, immediately, Govt. must ~~either~~ accept the rate of surcharge declared by the Coy., if below the limits fixed in the order, or sanction these limiting surcharges, pending the result of a detailed enquiry. Who is to make the detailed enquiry? and on what lines is it to be made?

5. The papers should be returned to the El. Engr. to Govt. and he should be asked to submit immediately the fully detailed note already asked for explaining exactly the whole procedure that will be followed on receipt of the applications from the Coy. until the declaration of the sanctioned surcharge.

ID/ 22.6.44.

~~EE~~

E.E. to Govt. V.V.

ID /23.VI.44.